

APPENDIX C

[Environmental Protection Easement and Declaration of Restrictive Covenants]

**(To be attached as Appendix C, when the City has provided document to EPA,
consistent with the requirements of the Order and Decree)**

COPY



Document 2007 1038

Book 2007 Page 1038 Pages 8

Date 3/09/2007 Time 11:15 AM

Rec Amt \$42.00

JOLYNN GOODCHILD, COUNTY RECORDER
PLYMOUTH IOWA

Orig
\$42.00
City of Le Mars

Joe Flannery
L

Type / Title of Document: Restrictive Environmental Covenant

Return Document to:

Name: Joseph W. Flannery

Address: 11 Central Avenue NW; PO 158 Le Mars, IA 51031
Street Address City Zip

Telephone: (712) 546-1605

Preparer Information

Name: United States Environmental Protection Agency

Address: 901 N 5th Street Kansas City, Kansas 66101
Street Address City Zip

Telephone: (913) 551-7826

Taxpayer Information

Name: City of Le Mars, Iowa

Address: 40 Central Avenue SE Le Mars, Iowa 51031
Street Address City Zip

Telephone: (712) 546-7018

Grantor(s): City of Le Mars Iowa

40 Central Avenue SE, Le Mars, IA 51031

Holder(s) / Grantee(s): Environmental Protection Agency

901 N 5th St Kansas City, Kansas 66101

Legal Description, including parcel identification number, if available: See page 2

State law requires that all instruments have signatures notarized. See Iowa Code, 9E.14, 9E.15, and 558.39.

On or after July 1, 2005, any document that does not conform to the document formatting standards shall not be recorded except upon payment of an additional recording fee of ten dollars (\$10.00) per document or instrument.

ENVIRONMENTAL COVENANT

This Environmental Covenant is established pursuant to 2005 Iowa Acts, Senate File 375 (to be codified as Iowa Code Chapter 455I and hereafter cited as Iowa Code 455I.) The City of Le Mars, Iowa ("Grantor") and the Iowa Department of Natural Resources ("IDNR") and the United States Environmental Protection Agency ("EPA") enter into this Environmental Covenant for the purpose of subjecting the property described below to certain activity and use limitations in accordance with the terms and conditions as specified below and the provisions in Iowa Code chapter 455I. and Iowa Code section 455B.103(7).

1. **Affected Property.** The Grantor as identified below is the fee title owner of property legally described as Lot Five (5) Section Nine (9), Township Ninety-two North (92N), Range Forty-five West (45W), Auditors Plat City of Le Mars, Plymouth County, Iowa (hereafter "Property").

2. **Purpose.** Because contamination will remain at the Property at levels above those appropriate for unlimited use and unrestricted exposure, this Environmental Covenant is being imposed on the Property for the purposes of protecting public health and the environment, and to prevent interference with the performance, and the operation and maintenance, or any environmental response project required on the Property.

3. **Background.** The Property is part of the Le Mars Coal Gas Plant Superfund Site ("Site"), at which the EPA has performed response actions pursuant to 40 C.F.R. Section 300.415 of the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"). EPA selected a non-time-critical removal action for the Site in an Action Memorandum dated September 26, 2003, and amended on May 12, 2004. On February 4, 2005, Grantor and EPA entered into an Administrative Order on Consent for Removal Action, Docket No. CERCLA-07-2005-0125, whereby Grantor agreed to conduct certain response actions in coordination with EPA's non-time-critical removal action including: provide backfill material for areas of the Site excavated by EPA, conduct groundwater monitoring, and implement institutional controls to prevent exposure to contaminated soil and groundwater. The Action Memorandum and other documents contained in the administrative record may be viewed at the EPA offices at the address specified in Paragraph 17 below.

4. **Identity of Grantor, Grantee/Holder and Agency, as each is defined in this Environmental Covenant and as provided in Iowa's Uniform Environmental Covenants Act (SF 375):**

Grantor: City of Le Mars, Iowa is the current owner of the Property and the Grantor of this Environmental Covenant.

Grantee/Holder: the City of Le Mars, Iowa is the Grantee/Holder of this Environmental Covenant.

Agency: IDNR and EPA are each an Agency under this Environmental Covenant.

5. Representations and Warranties. The Grantor warrants to the other signatories to this Environmental Covenant the following:

- a. the Grantor is the sole fee title owner of the Property;
- b. that the Grantor holds sufficient fee title to the Property to grant the rights and interests described in this Environmental Covenant free of any conflicting legal or equitable claims;
- c. that the Grantor has identified all other persons holding legal or equitable interests, including but not limited to contract buyers, mortgage holders, other consensual lienholders, and lessees and secured their consent either by signatures on this Environmental Covenant or by a separate subordination and consent agreement attached hereto.

6. Running with the Property. This Environmental Covenant is perpetual and runs with the Property as provided in SF 375 until modified or terminated as provided below in Section 11. This Environmental Covenant is binding on Grantor and its successors, assigns, and all transferees acquiring or owning any right, title, lien or interest in the Property and their heirs, successors, assigns, grantees, executors, administrators, and devisees. The term "transferee," as used in this Environmental Covenant, shall mean any future owner of any interest in the Property or any portion thereof, including, but not limited to, owners of an interest in fee simple, contract buyers, mortgagees, easement holders, and/or lessees.

7. Activity and Use Limitations and Terms. The following activity and use limitations apply to the use of the Property. Unless otherwise approved in writing by EPA, Grantor shall not:

- a. Utilize the groundwater underlying the Property for domestic purposes such as drinking, cooking or bathing;
- b. Cause or allow a disturbance of the subsurface of the Property without permission from EPA;
- c. Use the Property for residential purposes; and
- d. Construct any building or structure on the Property that contains a basement.

8. Notice of Non-Compliance. Grantor and any subsequent transferee of the Property shall notify IDNR and EPA as soon as possible of any conditions that would constitute a breach of the activity and use limitations specified above in Section 7.

9. Access. Grantor hereby grants to EPA and IDNR, and their respective representatives, an irrevocable, permanent and continuing right of access at all reasonable times to the Property for the purposes of:

- a. Implementing the response actions in the Action Memorandum and the Order;
- b. Verifying any data or information submitted to EPA or IDNR;
- c. Verifying that no action is being taken on the Property in violation of the terms of this instrument or of any federal or state environmental laws or regulations;
- d. Monitoring response actions on the Site and conducting investigations relating to contamination on or near the Site, including, without limitations, sampling of water and specifically, without limitation, obtaining split or duplicate samples;
- e. Conducting periodic reviews of the Grantor's response actions, including but not limited to reviews required by applicable statutes and/or regulations; and
- f. Implementing additional or new response actions if EPA or IDNR, in their sole discretion, determines i) that such actions are necessary to protect the environment because either the original response actions performed have proven to be ineffective or because new technology has been developed which will accomplish the purposes of the response action in a significantly more efficient or cost effective manner; and ii) that the additional or new response actions will not impose any significantly greater burden on the Property or unduly interfere with the then existing uses of the Property.

10: Groundwater Hazard Statement Iowa Code section 558.69 requires submission of a groundwater hazard statement and notice if "hazardous waste", as defined in Iowa Code sub-sections 455B.411(3), 455B.412(2) or section 455B.464, is present on real property. If hazardous waste is present, the groundwater hazard statement must state that the condition is being managed in accordance with IDNR rules. Grantor and all subsequent transferees required to submit a groundwater hazard statement under Iowa Code section 558.69 for the Property shall make reference to this Environmental Covenant in any instrument conveying an interest in the Property. Such reference shall be in substantially the following form:

THE INTEREST CONVEYED IS SUBJECT TO AN ENVIRONMENTAL COVENANT, DATED _____, 200_, RECORDED IN THE PLYMOUTH COUNTY RECORDER/REGISTRAR OFFICE ON _____, 200_, AS [DOCUMENT ____, BOOK ____, PAGE ____, OR BY PARCEL NUMBER ____]. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS: UNLESS OTHERWISE APPROVED IN WRITING BY EPA, GRANTOR SHALL NOT: (1) UTILIZE THE GROUNDWATER UNDERLYING THE PROPERTY FOR DOMESTIC PURPOSES SUCH AS DRINKING, COOKING OR BATHING; (2) CAUSE OR ALLOW A DISTURBANCE OF THE SUBSURFACE OF THE SITE WITHOUT PERMISSION FROM EPA; (3) USE THE PROPERTY FOR RESIDENTIAL PURPOSES; AND (4) CONSTRUCT ANY BUILDING OR STRUCTURE ON THE PROPERTY THAT CONTAINS A BASEMENT.

In addition, Grantor, any holder with a property interest sufficient to grant a lease of the Property and any subsequent transferee with sufficient property interest to grant a lease of the Property shall incorporate in full or by reference to this instrument, the terms of this Environmental Covenant in any leases, licenses, or other instruments granting a right to use of the Property.

11. Modification and Termination. This Environmental Covenant may be modified or terminated in accordance with and subject to the provisions of SF 375. The termination or modification of this Environmental Covenant is not effective until the document evidencing consent of all necessary persons is properly recorded.

12. Enforcement. The terms of this Environmental Covenant may be enforced in a civil action for injunctive or other equitable relief by the signatories and those persons authorized by and in accordance with SF 375.

13. Severability. If any provision of this Environmental Covenant is found to be unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

14. Governing Law. This Environmental Covenant shall be governed by and interpreted in accordance with the laws of the state of Iowa.

15. Recordation. Within thirty (30) days following execution of this Environmental Covenant by all parties hereto, Grantor shall record this Environmental Covenant in the same manner as a deed to the Property with the Plymouth County, Iowa, Recorder/Registrar Office.

16. Effective Date. The effective date of this Environmental Covenant shall be the date upon which the fully executed Environmental Covenant has been properly recorded with the Plymouth County, Iowa, Recorder/Registrar Office.

17. Notice. Unless otherwise notified in writing by an Agency, any document or notice required by this Environmental Covenant shall be submitted to:

Director
Iowa Department of Natural Resources
Wallace State Office Building
Des Moines, Iowa 50319

and

Director, Superfund Division
U.S. Environmental Protection Agency
901 North 5th Street
Kansas City, Kansas 66101

ACKNOWLEDGMENTS

GRANTOR/GRANTEE/HOLDER:

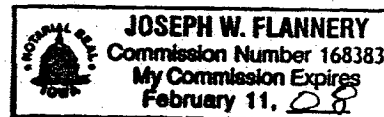
THE CITY OF LE MARS, IOWA
GRANTOR

By: _____
Title: Mayor
Date: 12/19/06

State of Iowa)
County of Plymouth) SS.

On this 19th day of Dec, 2006 before me personally appeared Virgil Van Beck, Mayor, who being duly sworn, did say that they are the municipality of the City of Le Mars, Iowa, that (the seal affixed to said instrument is the seal of said municipality or no seal has been procured by said municipality) and that the instrument was signed and sealed on behalf of said municipality by authority of its City Council and that the said City Council members acknowledge the execution of said instrument to be the voluntary act and deed of said municipality by them voluntarily executed.

Notary Public, State of Iowa:



AGENCY:

IOWA DEPARTMENT OF NATURAL RESOURCES

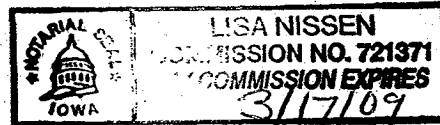
January 5, 2007

Jeffery R. Vonk
Director, Iowa Department of Natural
Resources

State of Iowa)
County of Polk) ss.

On this 5th day of January, 2007, before me personally appeared
Jeff Vonk, known to me to be the Director of the Iowa Department of
Natural Resources or the lawful designee of the Director who executed the foregoing instrument,
and acknowledge that this person executed the same as his/her/their voluntary act and deed.

Notary Public, State of Iowa:



AGENCY:

U.S. ENVIRONMENTAL PROTECTION AGENCY

3/2, 2007

By Cecilia Tapia, Director
Superfund Division

State of Kansas)
County of Wyandotte) ss.

On this 2nd day of March, 2007, before me personally appeared Cecilia Tapia, the Director of the Superfund Division of Region VII of the U.S. Environmental Protection Agency, who being duly sworn, did sign this Environmental Covenant.

Notary Public, State of Kansas

KENT JOHNSON
NOTARY PUBLIC
STATE OF KANSAS
My Appt. Exp. 7/2/07

